(2016) 04 MAD CK 0162

In the Madras High Court

Case No : C.M.A. No. 3148 of 2007 and C.M.A. No. 2431 of 2008

Commissioner of C. Ex., Chennai-III APPELLANT

Vs

Brakes India Ltd. RESPONDENT

Date of Decision : 15-04-2016

Acts Referred:

Citation : (2016) 337 ELT 204

Hon'ble Judges : V. Ramasubramanian and M.V. Muralidaran, JJ.

Bench : Division Bench

Advocate : Shri A.P. Srinivas, Advocate, for the Appellant; Shri Raghavan Ramabadran, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J. (Common)—The Revenue has come up with the above appeals, raising the substantial questions of law which reads as under;

C.M.A. No. 3148 of 2007 :

Inasmuch as the inputs in question were procured solely for the purpose of export and such inputs were not used in or in relation to the manufacture of the finished goods of the assessee/respondent, whether the Tribunal is correct in allowing the credit of duty with reference to Rule 6 of Cenvat Credit Rules?

C.M.A. No. 2431 of 2008 :

"1. Whether the CESTAT is correct in holding that the impugned goods became fully manufactured goods in the premises of the appellants particularly when the appellant had admittedly done only testing and packing of the goods in their premises, which do not amount to manufacture in terms of Section 2(f) of the Central Excise Act, 1944 as no new product has emerged?

2. In view of the above, whether the CESTAT is right in allowing the Cenvat credit on automotive parts which had not undergone any manufacturing process in the premises of the appellant when the basic condition, envisaged in Rule 3 of

Cenvat Credit Rules, 2004 is not satisfied?"

2. Heard Mr. A.P. Srinivas, learned Senior Standing Counsel appearing for the appellant-Department and Mr. Raghavan Ramabadran, learned counsel appearing for the respondent-assessee.

3. The assessee admittedly receives various inputs such as steel scrap, pig iron and chemicals and manufacture castings. Thereafter these castings are sent to job workers for machining operation. While sending them to the job workers, the goods were cleared without payment of duty under job work challans under the Rule 4(5)(a) of the Cenvat Credit Rules, 2002. The machined castings are cleared by the job worker from his premises and sent directly to another company by name Kirloskar Toyoto Textile Machinery Ltd. (hereinafter referred to as `KTTM Ltd.'') Bangalore under delivery challans. At that time, the assessee pays excise duty for the clearance and hands over the duty paid invoice to KTTM Ltd. The payment of the duty was based on the price of castings and machining charges. KTTM Ltd. which can virtually be called the second job worker avails Cenvat credit and do some painting. Thereafter they send the goods to the assessee again on payment of duty. The value adopted at that time by KTTM Ltd. was the initial value adopted by the assessee plus the painting charges. This duty paid invoice is handed over by KTTM to the assessee and the assessee takes Cenvat Credit. The assessee thereafter does testing, packing of goods and clears the same for export under bond without payment of Central Excise Duty.

4. While the aforesaid activities constitute basic facts out of which one appeal arise, a different set of facts constitute the foundation for the other appeal. What happened in the other case was that the assessee manufactured rough iron castings and cleared them on payment of duty to a company called Real Talent Engineering Private Limited. That company''s machined castings are again cleared on payment of duty to assessee. The assessee exported the same after testing and packing and claimed Cenvat credit.

5. However a show cause notice dated 1-7-2003 was issued proposing to disallow the Cenvat credit in respect of the 2nd case and this resulted in an order-in-original dated 29-8-2003 dropping the proposals.

6. However, another show cause notice dated 28-10-2004 was issued. During the pendency of this second show cause notice in respect of certain other items, the Department filed an appeal against the order-in-original dated 29-8-2003 dropping further proceedings on the first show cause notice. This appeal was allowed by an order dated 8-12-2004, forcing the assessee to file a further appeal before the CESTAT.

7. In the meantime, the second show cause notice dated 28-10-2004 resulted in an order-in-original dated 28-6-2005, disallowing Cenvat credit to the extent of 1,12,84,978/-. As against this order also, the assessee filed an appeal to the CESTAT.

8. Both the appeals in A. Nos. 793 and 232 of 2005 were allowed by the Tribunal by an order dated 28-5-2007 [2007 (214) E.L.T. 380 (Tri. - Chennai)] holding that the testing and packing done by the assessee were part of a series of processes undertaken both for the manufacture of the finished product. As against the common order passed in both these appeals, the department has come up with only a single appeal in C.M.A. No. 3148 of 2007.

9. Likewise, another show cause notice dated 7-11-2015 was issued proposing to reverse the Cenvat credit on the ground that the assessee received inputs upon payment of duty from KTTM Limited and took Cenvat credit. These goods were exported under bond after inspection, testing and packing. This show cause notice resulted in an order-in-original dated 28-2-2007. This order was reversed on an appeal filed by the assessee in A. No. 418 of 2007, dated 16-7-2007. As against this order, the Department has come up with C.M.A. No. 2431 of 2008.

10. From the above narration of facts, it is clear that out of a common order dated 28-5-2007 passed by the Tribunal, in two appeals, Appeal No. 793 of 2005 and Appeal No. 232 of 2005, the Department has chosen to file one single appeal in C.M.A. No. 3148 of 2007. But this is not possible for the reason that those two appeals arose out of different show cause notices and different orders-in-original. Let us keep this aside for a moment and test whether the contentions of the Department are correct or not?

11. We have already extracted the substantial questions of law raised in C.M.A. No. 3148 of 2007. These questions revolve around the issue as to whether the input procured solely for the purpose of export by the assessee is entitled to Cenvat credit when the goods were subjected only to testing and packing.

12. But the facts of the case show that before the goods were handed over to KTTM, the assessee had undertaken a series of processes. Steel scrap, pig iron and chemicals are received as in puts by the assessee and castings are manufactured. It is only after such a manufacturing activity is undertaken, the goods are sent to one job worker for machinisation. That job worker sends the machinised goods to KTTM Ltd. Therefore, the question of law raised by the Department proceeds to a wrong presumption that the assessee had done nothing except testing and packing. In the circumstances, we are of the considered view that the question of law is thoroughly misconceived as it does not arise out of the facts of the case. The questions of law raised in other appeal also proceed on the premise that whatever has been done before the goods are received from the KTTM Ltd., have to be completely forgotten. The contention of Mr. A.P. Srinivas, learned senior panel counsel is that since the invoices were raised and duty paid by the job worker, the chain is completely broken. According to the learned panel counsel, the stage at which the assessee claim Cenvat credit involved mere testing and packing and hence the assessee was not entitled to claim Cenvat credit.

13. But we do not accept. This is not a case where the assessee is attempting to

claim Cenvat credit twice over. Whatever credit was claimed by them before they sent it to KTTM Ltd., was actually reversed. Therefore, the credit was still available for the assessee to take. The Tribunal was therefore, right in this regard in holding that testing and packing were part of a series of steps undertaken by the assessee for the manufacture of the goods. Hence the questions of law that arise for consideration in these civil miscellaneous appeals are also answered in favour of the assessee. Accordingly, the appeals are dismissed. No costs.

